

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY,

Plaintiff,

v.

ADP MARSHALL, INC., a FLUOR DANIEL
COMPANY, and FIREMAN'S FUND
INSURANCE COMPANY,

Defendants.

CIVIL ACTION NO. 04 CV 10203 PBS

ADP MARSHALL, INC.,

Third Party Plaintiff,

v.

ALLIED CONSULTING ENGINEERING
SERVICES, INC., et al.,

Third Party Defendants.

AFFIDAVIT OF JAY BERNSTEIN

I, Jay Bernstein, having been duly sworn, hereby depose and state as follows:

1. I am employed by St. Paul Travelers as a Managing Director and I have full authority to adjust, manage and defend the claims made against United States Fidelity and Guaranty Company ("USF&G") in this lawsuit. I make the statements that follow on personal knowledge or on the basis of business records of USF&G, of which I am the keeper.

2. At all times relevant to this action, USF&G has been in the business of, among other things, issuing performance and payment surety bonds to various contractors to secure their performance on various construction projects.

3. On or about January 5, 2001, ADP Marshall, Inc. ("ADP") entered into a subcontract ("the Subcontract") with The Hartford Roofing Company, Inc. ("Hartford Roofing") to perform certain roofing work at the project known as the Advanced Technology and Training Manufacturing Center in Fall River, Massachusetts ("the Project").

4. On or about March 13, 2001, USF&G, as surety, executed a Subcontract Performance Bond ("the Bond") on behalf of Hartford Roofing, as principal, in favor of ADP, as obligee, for the Project. A true and correct copy of the Bond is attached hereto as Exhibit A.

5. While ADP has requested that USF&G evaluate the claims made by the Project's owner, the Massachusetts Development Finance Agency, concerning allegations of defective and/or incomplete work by Hartford Roofing, ADP has not provided any notice to USF&G that it has declared Hartford Roofing to be in default of the Subcontract, which is a precondition to USF&G's liability, if any, under the Bond.

SIGNED UNDER PAINS AND PENALTIES OF PERJURY ON THIS 31st DAY OF MARCH, 2005.

/s/ Jay Bernstein
Jay Bernstein, Esq.
St. Paul Travelers